

Remarks

Claims 50-55, 70-74, and 79-119 are pending in the present application. Applicants herein amend claim 50 by incorporating claim 71 therein. Claims 71, 72, and 74 are cancelled herein as a result. In addition, in view of the election made on March 23, 2009, claims 79-81, 83, 89, 90, 95, 104-109, and 115-118 are also cancelled herein. Amendments to claims 73, 82, 84-87, 91, 93, 96, 110, 112, 113, and 114 have also been made as a result of the cancellation of claims 79-81. Entry of the foregoing amendments is respectfully requested.

After entry of the foregoing amendments, claims 50-55, 70, 73, 82, 84, 87, 88, 91, 92, 96-102, 110-112 will have been examined, and claims 85, 86, 93, 94, 103, 113, 114 and 119 will remain pending, but directed to non-elected species. Consideration of claims 85, 86, 93, 94, 103, 113, 114 and 119 is respectfully requested once claims 50-55, 70, 73, 82, 84, 87, 88, 91, 92, 96-102, 110-112 are indicated to be allowable.

The Examiner issued the following rejections in the outstanding Office Action: 1) at page 3, the Examiner rejected claims 50-55, 70, 82, 84, 87, 88, 90-92, and 110-112 under 35 USC § 102 as being anticipated by Shigeno; 2) at page 6 of the Office Action, the Examiner rejected claims 50, 52, 70, 82, 87, 88, 90, 96-102, and 110-112 under 35 USC § 103 as being unpatentable over Okamura in view of Gaserod; and 3) at page 10 of the Office Action, the Examiner rejected claims 50, 52, 70, 82, 84, 87, 88, 90-92, 96-102 and 110-112 under 35 USC § 103 as being unpatentable over Ueda in view of Gaserod.

The Examiner did not include claim 71 in any of the foregoing rejections. In view of the incorporation of claim 71 into claim 50, withdrawal of the foregoing rejections is respectfully requested.

At page 13 of the Office Action, the Examiner rejected claims 50-55, 70, 71, 73, 82, 84, 87, 88, 90-92, 96-102 and 110-112 under 35 USC § 103 as being unpatentable over Lee in view of Gascerod.

The Examiner's position is that Lee discloses a microencapsulation method for the preparation of a controlled release oral drug delivery system and capsules formed thereby. The Examiner refers to portions in Lee purported to disclose the mixing of drugs with oils, use of a two phase system, sodium alginate, liquid cores, emulsifying agents and enteric or delayed release capsules. The Examiner appears to note that Lee does not disclose the presently claimed capsule shape, dimensions, percentages, and ratios in the claims, but, without any support, argues that it would have been obvious to those skilled in the field of seamless capsules to determine suitable amounts/ranges/dimensions via routine experimentation and to arrive at the presently claimed shapes since shapes are a matter of "personal preference" (see page 15, first full paragraph). The Examiner adds that Lee does not teach the "G" content of the ionic gel membrane, but cites Gascerod for suggesting the claimed G-block content.

Applicants respectfully traverse the foregoing rejection and respectfully request reconsideration thereof.

That is, the present invention is directed to seamless capsules that are oblong, oval or cylindrical comprising a polysaccharide gel membrane encapsulating an emulsion, wherein

the emulsion comprises oil in an amount of at least 50%. The combination of Lee and Gaserod, alone or in any combination, do not disclose or suggest the presently claimed seamless capsules possessing such a large amount of oil that are “oblong, oval, or cylindrical.”

Rather, Lee is directed to a distinctly different freeze-dried matrix that exists in a powdered state. More specifically, Lee discloses dispersing a drug in an oil, adding the oil to an aqueous phase containing a polysaccharide and emulsifier, emulsifying the two phases to form an oil-in-water emulsion containing drug-dispersed oil droplets having a diameter of from 1-5 microns, adding the emulsion to a multivalent cation-containing solution, and then freeze-drying the emulsion to obtain “a final product in powdery state” (see Lee at page 3, lines 38-39; emphasis added).

Nothing in the powdered matrix of Lee discloses or suggests the presently claimed large amounts of oil encapsulated in a seamless capsule that is oblong, oval, or cylindrical as in the present invention. Furthermore, nothing in the powdered matrix of Lee discloses or suggests, for example: (i) the seamless capsule of claim 52 having a wet capsule diameter in the range of 1 mm to 40 mm and a gel membrane having a thickness of 0.3 mm to 4 mm; or (ii) the seamless capsule of claim 55 having a dry capsule diameter in the range of 0.5 mm to 35 mm and a dry polysaccharide gel film thickness in the range of 40 μm to 500 μm .

Moreover, the Examiner supports the foregoing rejection by arguing that selection of various amounts and dimensions in seamless capsules would be determined by “routine” experimentation (see pages 14 and 15 of the Office Action) and that selecting a shape is a matter of “personal preference” (see page 15 of the Office Action). However, the Examiner has not cited a single reference in support of such views of the level of skill in the field of

seamless capsules. For example, the Examiner has not cited a single reference that discloses or suggests that the presently claimed large amounts of oil could be encapsulated in a seamless capsule that is oblong, oval, or cylindrical as in the present invention.

Furthermore, as Lee forms a powdered matrix by freeze drying an emulsion, it is not seen how one skilled in the field would even be able to modify the teachings in Lee (relating to a powdered matrix) and arrive at the seamless capsules of the present invention.

Applicants respectfully submit that the present invention is unobvious and patentable over Lee in view of Gaserod. Accordingly, withdrawal of the foregoing rejection is respectfully requested.

At page 17 of the Office Action, the Examiner provisionally rejected claims 50-55, 70, 82, 84, 87, 88, 90-92 and 110-112 on the ground of obviousness-type double patenting over claims 53-60 of copending USSN 11/713,176. Applicants will consider the desirability of filing a terminal disclaimer at such time as an indication of allowable subject matter is received.

Early favorably action is earnestly solicited.

Respectfully submitted,

November 19, 2009

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